

Investigation by the Department on its own)
 Motion into the Appropriate Regulatory Plan)
 to succeed Price Cap Regulation for Verizon) D.T.E. 01-31
 New England, Inc. d/b/a Verizon Massachusetts')
 intrastate retail telecommunications services)
 in the Commonwealth of Massachusetts)
)

In response to the surrebuttal testimony filed by other parties on November 1, 2001,¹ Verizon Massachusetts (“Verizon MA”) is filing rejoinder testimony in accordance with the procedural schedule established by the Hearing Officer’s ruling dated October 16, 2001. As described below, portions of the surrebuttal testimony raise an issue that is not properly within the scope of this case and, therefore, should be stricken from the record. To the extent that the surrebuttal testimony is not limited, Verizon MA should be afforded the opportunity to supplement its rejoinder testimony to address that issue.

¹ Surrebuttal testimony was filed by the Attorney General of the Commonwealth (“Attorney General”) and AT&T Communications of New England, Inc. (“AT&T”).

extensively on the issue of Verizon MA's performance in provisioning special access services. *See, e.g.*, Surrebuttal Testimony Deborah S. Waldbaum, at 3-4. This issue is not properly before the Department in this case, and related testimony should not be entered into the record.

The issue of Verizon MA's performance for special access services is being considered by the Department in D.T.E. 01-34, which the Department opened in response to a number of CLEC complaints. *Vote to Open Investigation*, D.T.E. 01-34 (March 14, 2001). Despite the fact that over 99 percent of special access services in Massachusetts are provisioned under federal tariff (and thus beyond the Department's jurisdiction), the Department determined that it would consider data relating to interstate special access services in that proceeding. *Id.*; *Order on Verizon's Motion for Partial Reconsideration and/or Clarification*, D.T.E. 01-34 (October 25, 2001).² Even though the Department lacks jurisdiction over the vast majority of special access services provided by Verizon MA,³ the Department has required Verizon MA to provide data on special access services provided under federal tariff. In response to a number of information requests that AT&T and WorldCom propounded in D.T.E. 01-34 (replicated by AT&T in this proceeding), Verizon MA has indicated that, notwithstanding its objections, it will provide responses in D.T.E. 01-34 and supplement its responses in this proceeding as soon as practicable.⁴

² In addition, AT&T has filed a petition with the Federal Communications Commission relating to interstate special access performance.

³ Interlocutory orders of the Department cannot generally be appealed by an aggrieved party. Nonetheless, Verizon MA's compliance with the Department's interlocutory rulings in D.T.E. 01-34 should not be interpreted as agreement with or acquiescence to those decisions. Verizon MA does not waive its rights to seek review of a final Department order based on jurisdictional grounds.

⁴ Responding to those information requests has been complicated by the fact that most of the records reside in databases located at Verizon's central office at 140 West Street, New York, which is in the immediate vicinity of the World Trade Center devastation. *See, e.g.*, responses to Information Requests ATT-VZ 4-2 through ATT-VZ 4-25 and responses filed in D.T.E. 01-34 attached thereto.

The issue of Verizon MA's performance in provisioning special access services should not be considered separately in this case. In D.T.E. 01-34 the Department is specifically investigating Verizon MA's provision of special access services, and interstate special access performance is the subject of a petition for an FCC rulemaking by AT&T. If it is determined that any deficiencies exist, they will be remedied in the appropriate regulatory forum. Thus, any possible negative impact on competition that could result from Verizon MA's provisioning of special access services will be resolved in other proceedings; no need exists for the Department to duplicate those investigations in this case.⁵ Accordingly, the issue of Verizon MA's provisioning of special access services should not be considered in this case, and those portions of surrebuttal testimony that address the issue should be stricken from the record.

Alternatively, if the Department does not strike the surrebuttal testimony on special access services, Verizon MA should be permitted to supplement the record by providing additional rejoinder testimony on the issue. As indicated in the above-cited responses to information requests, it was not possible for Verizon MA to gather information with which to respond by the November 14th filing date for rejoinder testimony. If the issue of Verizon MA's performance in provisioning special access services under federal tariff is to be considered by the Department in accessing the level of competition in Massachusetts, which it should not, the record on the matter developed in D.T.E. 01-34 should be incorporated by reference in this case,⁶ and Verizon MA should be permitted the opportunity to provide limited supplemental rejoinder testimony.

⁵ Of course, if the regulatory reviews confirm Verizon MA's contention that there are no inadequacies in Verizon MA's provisioning of special access services, there would be even no arguably negative implications on the state of competition in Massachusetts.

⁶ The Department's rules permit the incorporation by reference of evidence contained in other Department proceedings. 220 C.M.R. 1.10(3). This is particularly appropriate in this case because AT&T is an active party in both cases.

Accordingly, the Department should strike those portions of surrebuttal testimony that address the issue of Verizon MA's provision of special access services or, alternatively, permit Verizon MA to supplement its rejoinder testimony to address the issue.

Respectfully submitted,

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